

## Q&A: PROPOSED CRIMINAL BACKGROUND LEGISLATION FOR NURSING LICENSURE

**BILL TITLE:** For an act entitled, An act to require each applicant for licensure as a nurse in South Dakota or a licensee who is the subject of a disciplinary investigation to submit to a state and federal criminal background check.

### ***What does this bill actually do?***

This bill grants authority to the South Dakota Board of Nursing to conduct criminal background checks as a condition for licensure and during the course of a disciplinary investigation.



### ***Why does there have to be legislation in order for this to be done?***

PL 92- 544 authorizes the FBI to conduct criminal background checks for boards empowered by a state statute approved by the U.S. Attorney General. Unless a board is authorized by state law, the FBI cannot perform the criminal background checks.

### ***Does this bill in any way imply that nurses are not trustworthy?***

Nurses have consistently been rated by the public as one of the most honest and ethical professions. In 2005, nurses were rated the number one most honest and ethical profession by the Gallup Poll. Individuals who are not worthy of the public's trust are excluded from practice. This bill assists with that effort and preserves the excellent reputation of the nursing profession.

### ***Why is it necessary to perform criminal background checks?***

The Board of Nursing has a responsibility to exclude individuals from licensure who pose a risk to the public health and safety.

Nursing care is often of an intimate physical nature which affords nurses access to information about a patient as well as the patient's personal property and loved ones in a way that is not available in a business or social relationship or to the public.

Checking whether applicants have a criminal history and examining the nature of that history provides significant information useful in making licensure decisions.

Another major reason to implement criminal background checks relates to the interstate Nurse Licensure Compact (NLC). South Dakota is one of 21 states which have enacted the NLC, which is very similar to the driver's license model. A uniform core requirement for participating in the NLC is that criminal background checks be conducted prior to a license being granted. South Dakota has agreed to comply with this requirement, and must do so in order to continue our participation in the Nurse Licensure Compact.



### ***How has the Board obtained information about criminal history in the past?***

The current system relies on self- disclosure of past criminal history by the nurse applying for a license.

### ***Why does this system need to be changed?***

Self- disclosure by licensure applicants is not the best means of public protection available to regulatory boards. The Board has no verification that the applicant has disclosed the information other than the word of the applicant. Criminal background checks are used to verify that information disclosed is truthful and constitutes full disclosure.

Once a license is issued, it becomes a property right. It is safer for the public and more cost effective and more efficient to deal with these issues prior to licensure rather than after such a property right has been granted.

### ***How many criminal background checks would be conducted each year?***

The Board anticipates conducting approximately 950 checks per year. The Board would conduct checks for nurses seeking initial licensure in South Dakota and, when necessary, during the course of a disciplinary investigation.

### ***Would criminal background checks be required for nurse licensure renewal?***

No. A nurse currently licensed in South Dakota would not be required to obtain a criminal background check to renew.

### ***What happens to a nurse who applies for a license who has a positive criminal history?***

The Board will continue to make licensure decisions on a case- by- case basis. The Board requires anyone convicted of a felony to personally appear before the Board before an initial license can be issued or a current license can be renewed. A felony conviction is currently grounds for denial or revocation. The Board examines every case individually and determines whether or not to grant a license to an individual based on the facts of the case.



### ***How much will it cost and who will pay for it?***



The applicant for licensure will bear the \$44 cost of the criminal background check. Costs related to fingerprinting will vary from no charge up to \$10. The applicant will pay for all charges.

### ***How will nurses know what is expected of them related to criminal background checks?***

Rules will be promulgated to define the process, and instructions will be included in the licensure application.